THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A. O. No. 491 of 2001

Old F.A.F.O. No. 1187 of 1990

Jaikirit Singh S/O Shri Puran Singh'
Resident of village Kuhed Gaon, P.O. Chamoli,
Tehsil and District Chamoli.

…. **Appellant.**

Versus

1. Rajendra Singh Negi,
   C/O Soil Conservation Officer, Upper Ganga Project Office,
   Gopeshwar, District Chamoli.
2. National Insurance Company, Gopeshwar
   District Chamoli.

.. **Respondents**

Sri Rajendra Dobhal, Adv. learned counsel of the appellant.
Sri Lalit Belwal, Adv., learned counsel for the respondent no.2.

Date June 08, 2006.

P.C : Hon'ble B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 31-7-1990, passed by the Motor Accident Claims Tribunal/ District Judge Chamoli ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 11 of 1983, Rajendra Singh Negi Vs. Jaikirit Singh and another, whereby claim petition for compensation of Rs. 35,000/- was decreed against the opposite parties. The appellant Jaikirit Singh owner of the vehicle was ordered to pay compensation of Rs. 10,000/- and the Insurance Company was directed to pay compensation of Rs. 25,000/-.

At the outset, it is pertinent to mention that in the motor accident in question, few persons lost their life and several others suffered grievous injuries. Different Claim Petitions were preferred by the claimants. In the accident, besides claimant Rajendra Singh, Bankey Lal and some others sustained grievous injuries. The case relating to claimant Bankey Lal was also decided by the learned Tribunal vide judgment and award dated 31-7-1990. Jaikirit Singh preferred appeal before the Allahabad High Court, which was registered as F.A.F.O. No. 1217 of 1990 and the same

was ultimately transferred to this Court and was numbered as A.O. No. 997 of 2001. This Court has already decided A.O. No. 997 of 2001, Jaikririt Singh Vs. Benkeylal Sajwan and another vide judgment dated 13-4-2006, which had arisen out of Motor Accident Claim Petition No. 7 of 1988, Bankey Lal Sajwan Vs. Jaikirit Singh and another, decided on 31-7-1990. The controversy involved in the present appeal has already been resolved by the said judgment and a reference to that effect shall be made at appropriate place.

Brief facts of the case giving rise to the present appeal are that the claimant Rajendra Singh Negi filed a claim petition for compensation of Rs. 50,000/- before the Tribunal in respect of the injuries sustained by him in a motor vehicle accident, which occurred on 14.2.1988 involving bus no USY-3268 which was being driven rashly and negligently by its driver. The bus was owned by the appellant and it was duly insured with the respondent no.2.

The owner of the vehicle as well as the insurance company filed their separate written statements and contested the case. The owner has alleged that he had sold the vehicle to one Saukin Singh prior to the date of accident, hence was not liable to pay compensation. Moreover, the vehicle was insured with the respondent no.2. The Insurance Company also denied the allegations mainly on the ground that it is not proved that the injures was travelling in the ill-fated vehicle on the date of accident.

On the pleadings of the parties, the leaned Tribunal framed necessary issues in the case.

After perusing the evidence on record and hearing the parties, the learned Tribunal that the inured was travelling by the bus in question on 14.2.1988, which was being driven rashly and

Tribunal came to the conclusion that the claimant was employed in the office of Basic Shiksha Adhikari and due to injuries, one of his hands has become ineffective and useless and iron rod has been inserted therein. Accordingly, he has held the claimant entitled for compensation of Rs. 35,000/- as mentioned earlier.

The impugned judgment and award has been assailed mainly on the ground that there was no negligence on the part of the bus driver, rather the accident occurred due to negligence on the part of driver of Government Jeep No. USY-3285; that the owner of the vehicle-appellant had transferred the vehicle prior to the date of accident but these facts were not considered by the Tribunal. It was also contended that the injury report was not proved by the claimant and that the quantum of compensation is without any basis.

I have heard learned counsel for the appellant as well as learned counsel for the respondent no.2-insurance company and perused the record. It may be mentioned here that no cross-objection has been filed by the respondent no.2 in this appeal.

So far the contention that there was no negligence on the part of the bus driver is concerned, the accident is admitted to the owner of the vehicle. The claimant filed F.I.R. of the accident and injury certificate as well as medical expenses bills and vouchers. The claimant has examined himself and has stated on oath that on the fateful day, he was travelling by the bus in question from Karnprayag. The accident occurred due to collision of the bus with a jeep with the result the bus fell into Khadd. He has clearly stated that the bus was being driven rashly and negligently by its driver. He was hospitalized and due to accident, there was fracture of leg. On the other hand, the owner of the vehicle has examined Sridhar Prasad, the driver of the bus. He has stated that at the place of accident, the bus collided with a Jeep with the result the bus fell

into a ***Khadd***. He was cross-examined wherein he has admitted that he was prosecuted by the criminal court and in that case, he confessed his guilt. This statement of the driver of the bus is indicative of the fact that he was negligent in driving the bus, otherwise there was no occasion for him to confess his guilt before the criminal court. The finding of the learned Tribunal on this count is justified.

So far as the contention that the appellant had already transferred the bus to a third person Saukin Singh is concerned, the owner of the vehicle has not come-forward in the witness box to substantiate his contention. No document to prove this fact has even been filed in appeal. The burden to prove the plea raised by the alleged owner has not been discharged by him at all. In my opinion, the learned Tribunal has rightly discarded the allegation that the appellant was not liable to pay compensation.

As regards quantum of compensation, I find that the record reveals that the accident occurred on 14.2.88 and the claimant-injured remained under treatment up-to 18-3-1988. The claimant has deposed on oath that he spent 15-16 thousand rupees on this treatment. He was treated at Gopeshwar and then at a private hospital at Chamoli. It is but natural that the claimant must have engaged one attendant during the period of his long treatment at Chamoli. The claimant must have incurred expenses on attendant and for his conveyance besides expenses on special diet. The claimant has stated that steel rod has been inserted in his hand. Considering the nature of injuries, the period of hospitalization and the operation undergone by the claimant, I am convinced that the claimant must have suffered mental and physical agony apart from medical expenses. The Tribunal has awarded a lump sum of Rs. 35,000/- as compensation to the claimant injured. In my view, amount of Rs. 35,000/- as compensation is just and proper. Out of

this compensation amount, the Tribunal has fastened the liability on the appellant to the extent of Rs. 10,000/- only, because under the Old Motor Vehicles Act, 1939, the liability of insurance company was limited.

Moreover, all these points were already considered by this Court while deciding A.O. No. 997 of 2001, which was dismissed on merit vide judgment dated 13-4-2006. The facts of that appeal were almost similar.

No other point was urged or argued before me in this appeal.

Having gone through the entire material on record, I do not find any illegality or infirmity in the impugned award. The appeal preferred by the owner Jaikirit Singh is devoid of merit.

The appeal is hereby dismissed. The impugned judgment and award dated 31.7.1990 is upheld. No order as to costs.

The amount in deposit with this Court, if any, in compliance with order dated 23.11.90 be remitted to the Motor Accident Claims Tribunal Chamoli for being paid to the claimant.

(B.S.Verma, J.)

RCP